

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AUMINTRIUS DAMOUR GUNN,

Plaintiff,

v.

STANTON CORRECTIONAL
FACILITY, et al.,

Defendants.

No. 2: 21-cv-0456 KJN P

ORDER

Plaintiff is a former county prisoner, proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis is granted.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
 2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
 3 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
 4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
 5 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
 6 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
 7 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
 8 2000) (“[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
 9 meritless legal theories or whose factual contentions are clearly baseless.”); Franklin, 745 F.2d at
 10 1227.

11 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and plain
 12 statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
 13 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Bell Atlantic
 14 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
 15 In order to survive dismissal for failure to state a claim, a complaint must contain more than “a
 16 formulaic recitation of the elements of a cause of action;” it must contain factual allegations
 17 sufficient “to raise a right to relief above the speculative level.” Bell Atlantic, 550 U.S. at 555.
 18 However, “[s]pecific facts are not necessary; the statement [of facts] need only ‘give the
 19 defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” Erickson v.
 20 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal
 21 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as
 22 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the
 23 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236
 24 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

25 Named as defendants are the Stanton Correctional Facility, Solano County Sheriff
 26 Coroner’s Office, Solano County Sheriff’s Department and Sergeant Maulino. It appears that
 27 plaintiff was a pretrial detainee housed at the Stanton Correctional Facility during all relevant
 28 times.

1 Plaintiff alleges that he took medication prescribed to treat a sexually transmitted disease
2 (“STD”) from February 12, 2021, to February 18, 2021, and from February 22, 2021, to March 1,
3 2021. Plaintiff alleges that after finishing the prescriptions, he continued to experience symptoms
4 from the STD.

5 Plaintiff alleges that he is suing defendant Stanton Correctional Facility because officials
6 at the Stanton Correctional Facility stopped prescribing the STD medication despite plaintiff’s
7 continued symptoms. Plaintiff alleges that he is suing defendant Solano County Sheriff
8 Coroner’s Office for denying his grievance in which he stated that he continued to experience
9 symptoms after his medication expired and requested to be taken to Planned Parenthood for
10 treatment. The complaint contains no specific allegations against defendant Solano County
11 Sheriff’s Department.

12 Defendants Stanton Correctional Facility, Solano County Sheriff Coroner’s Office and the
13 Solano County Sheriff’s Department are subdivisions of a local government entity, i.e., Solano
14 County. A subsidiary of a public entity is not a proper defendant on a § 1983 claim. See Vance
15 v. Cty. of Santa Clara, 928 F. Supp. 993, 996 (N.D. Cal. 1996) (“The County is a proper
16 defendant in a § 1983 claim, an agency of the County is not.”); Nelson v. County of Sacramento,
17 926 F.Supp.2d 1159, 1170 (E.D. Cal. Feb. 26, 2013) (“Under § 1983, ‘persons’ includes
18 municipalities. It does not include municipal departments. Vance, 928 F.Supp. at 995–96.
19 Because the Sheriff’s Department is a subdivision of a local government entity (in this case the
20 County), the Sheriff’s Department is not a proper defendant for purposes of Plaintiff’s § 1983
21 claims.”); but see Cantu v. Kings County, 2021 WL 411111, at * 1 (E.D. Cal. Feb. 5. 2021)
22 (recognizing split within district courts regarding whether naming a sheriff’s department is
23 redundant or duplicative of the municipal entity; but finding that weight of authority finds that
24 claims against a municipality and its respective police departments are treated as claims against
25 the municipality and not subject to suit under 1983).

26 Pursuant to the case law cited above, the undersigned finds that the proper defendant is
27 Solano County. Accordingly, plaintiff’s claims against defendants Stanton Correctional Facility,
28 Solano County Sheriff Coroner’s Office and the Solano County Sheriff’s Department are

1 dismissed. If plaintiff files an amended complaint naming Solano County as a defendant, the
2 legal standard for stating a claim against a municipal entity is set forth below.

3 In Monell v. New York City Department of Social Services, the Supreme Court held that
4 liability under 42 U.S.C. § 1983 may be imposed on local governments when their official
5 policies or customs cause their employees to violate an individual's constitutional rights. 436
6 U.S. 658, 690–91 (1978). A plaintiff may establish Monell liability by showing that a city
7 employee committed an alleged constitutional violation pursuant to a formal governmental policy
8 or a “longstanding practice or custom which constitutes the ‘standard operating procedure’ of the
9 local governmental entity.” Gillette v. Delmore, 979 F.2d 1342, 1346 (9th Cir. 1992) (citation
10 omitted). A “policy” is a “deliberate choice to follow a course of action ... made from among
11 various alternatives by the official or officials responsible for establishing final policy with
12 respect to the subject matter in question.” Fogel v. Collins, 531 F.3d 824, 834 (9th Cir. 2008)
13 (citation omitted). A “custom” is a “widespread practice that, although not authorized by written
14 law or express municipal policy, is so permanent and well settled as to constitute a ‘custom or
15 usage’ with the force of law.” St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988) (citation
16 omitted).

17 Plaintiff alleges that defendant Maulino denied plaintiff's grievance challenging the
18 Facility's decision to stop giving plaintiff medication to treat his STD despite his continuing
19 symptoms. Plaintiff alleges that defendant Maulino also denied his request to be taken to an
20 outside clinic for treatment of the STD.

21 As a pretrial detainee during the relevant time period, plaintiff's claims concerning his
22 medical care arise under the Fourteenth Amendment's Due Process Clause. See Bell v. Wolfish,
23 441 U.S. 520, 535 n.16 (1979). The Ninth Circuit has held that “the proper standard of review”
24 for claims of inadequate medical care for pretrial detainees is “objective indifference.” Gordon v.
25 Cty. of Orange, 888 F.3d 1118, 1120, 1124–25 (9th Cir. 2018) (extending the “objective
26 deliberate indifference standard” articulated in Castro to inadequate medical care); see also
27 Horton v. City of Santa Maria, 915 F.3d 592, 602 (9th Cir. 2019) (noting that Gordon “recognized
28 that Castro's objective deliberate indifference standard extends to Fourteenth Amendment claims

1 by pretrial detainees for violations of the right to adequate medical care”). The defendants’
2 conduct must be objectively unreasonable, a test that will necessarily “turn[] on the facts and
3 circumstances of each particular case.” Gordon, 888 F.3d at 1125 (quoting Castro v. Cty. of Los
4 Angeles, 833 F.3d 1060, 1071 (9th Cir. 2016).) “[M]ere lack of due care by a state official’ does
5 not deprive an individual of life, liberty, or property under the Fourteenth Amendment.” Gordon,
6 888 F.3d at 1125. Therefore, the plaintiff must “prove more than negligence but less than
7 subjective intent— something akin to reckless disregard.” Id.

8 Plaintiff alleges that defendant Maulino denied his grievance seeking further treatment for
9 his STD despite plaintiff continuing to suffer symptoms of the STD after his prescription expired.
10 The undersigned cannot determine whether plaintiff has stated a potentially colorable Fourteenth
11 Amendment claim because plaintiff was given treatment, and he does not describe the symptoms
12 he continued to suffer after his prescription expired. Accordingly, plaintiff’s claims against
13 defendant Maulino are dismissed with leave to amend. If plaintiff files an amended complaint, he
14 shall describe the symptoms he continued to suffer after his prescription expired. Plaintiff shall
15 also clarify whether his grievance addressed to defendant Maulino described these symptoms.

16 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
17 about which he complains resulted in a deprivation of plaintiff’s constitutional rights. See, e.g.,
18 West v. Atkins, 487 U.S. 42, 48 (1988). Also, the complaint must allege in specific terms how
19 each named defendant is involved. Rizzo v. Goode, 423 U.S. 362, 371 (1976). There can be no
20 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a
21 defendant’s actions and the claimed deprivation. Rizzo, 423 U.S. at 371; May v. Enomoto, 633
22 F.2d 164, 167 (9th Cir. 1980). Furthermore, vague and conclusory allegations of official
23 participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266,
24 268 (9th Cir. 1982).

25 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
26 make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended
27 complaint be complete in itself without reference to any prior pleading. This requirement exists
28 because, as a general rule, an amended complaint supersedes the original complaint. See Ramirez

1 v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) (“an ‘amended complaint
2 supersedes the original, the latter being treated thereafter as non-existent.” (internal citation
3 omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any
4 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim
5 and the involvement of each defendant must be sufficiently alleged.

6 In accordance with the above, IT IS HEREBY ORDERED that:

7 1. Plaintiff’s request for leave to proceed in forma pauperis is granted.

8 2. Plaintiff’s complaint is dismissed.

9 3. Within thirty days from the date of this order, plaintiff shall complete the attached
10 Notice of Amendment and submit the following documents to the court:

11 a. The completed Notice of Amendment; and


12 b. An original and one copy of the Amended Complaint.

13 Plaintiff’s amended complaint shall comply with the requirements of the Civil Rights Act, the
14 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must
15 also bear the docket number assigned to this case and must be labeled “Amended Complaint.”

16 Failure to file an amended complaint in accordance with this order may result in the
17 dismissal of this action.

18 Dated: April 13, 2021

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AUMINTRIUS DAMOUR GUNN,

Plaintiff,

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STANTON CORRECTIONAL
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NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order
filed _____.

DATED: _____

Amended Complaint

Plaintiff